IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.742 OF 2005

Shankar Hanumant Lokre and ors. ... Applicants

versus

The State of Maharashtra ... Respondent

...

Mr. V.V. Purwant, for the Applicants.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

15th February 2005

P.C.:

. Heard Counsel for the parties. Perused the record. It appears that the incident in question took place on the spur of the moment and on account of political rivalry. However, there is direct evidence to indicate complicity of the Applicants Nos.1 and 2 in the commission of the crime. The injured has given the role played by

the said Applicants. Even the other witnesses have supported that version. The said Applicants Nos.1 and 2 were wielding lethal weapon, namely, sword, and assaulted the injured with the said weapon. The medico-legal certificate issued by Shri C.S.M.Sarvopchar Rugnalaya, Solapur, dated 29th October 2004 supports the prosecution case of injury caused by sword, as the injured has sufferd two sutured wounds. The learned Counsel for the said Applicants, however, contends that there is discrepancy in the injury certificate issued by the Rural Hospital, Barshi, where the injured was taken for treatment in the first instance, which only describes the injury as C.L.W. and this discrepancy has remained unexplained. In other words, it is submitted that the version of the witnesses is not supported by the medical evidence, for which reason the Applicants should be released on bail. I find no substance in this submission. On close examination of the certificate issued by the Rural Hospital, Barshi, it does appear that the size of each injury and the part of the body on which injury was inflicted have been correctly described. This matches with the description

given in the injury certificate issued by the Medical Officer, Solapur. However, the discrepancy is only with regard to the nature of injury. Instead of correctly describing the injury as sutured wound, it has been described as C.L.W. of which the Applicants are taking advantage. In my opinion, prima facie, the certificate issued by the Rural Hospital, Barshi, has been issued in casual manner and perhaps some mischief has been committed by the concerned doctor. That, however, will be matter of investigation and appropriate steps to be taken against the concerned doctor by the Health Department of the Government of Maharashtra, if so advised. For the present, suffice it to observe that there is ample evidence on record to connect the Applicants Nos.1 and 2 with the commission of the crime, which is of serious nature and, if it is so, the request for bail made on their behalf will have to be turned down, as has been done by the lower Court.

. However, insofar as Applicant No.3 is concerned, even the learned A.P.P. fairly accepts that none of the witnesses have mentioned

about any overt act or participation in the offence by this Applicant, except to indicate that he was seen holding sword in his hand. It cannot be overlooked that the incident in question has taken place on the spur of the moment and there is no charge of conspiracy. As none of the witnesses has spoken about the overt act of the Applicant No.3, he deserves to be enlarged on bail, having regard to the fact that charge sheet has been filed and investigation is complete, as also other accused, similarly placed, have already been released on bail. Accordingly, following order is passed on this application.

(A) Application filed on behalf of Applicants Nos.1 and 2 is rejected, for the reasons already recorded earlier.

(B) The application preferred on behalf of Applicant No.3 (Ganesh Vasant Lokare) is allowed. The said Applicant is directed to be released on bail in connection with CR.No.138/2004 registered with Barshi Police Station on executing

personal bond in the sum of Rs.25,000/- (Rupees Twenty-five thousand only) with two local sureties in the like amount.

(C) The Applicant No. 3 shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(D) The Applicant No.3 shall report to the concerned Police Station once in a month on first Saturday of every English calendar month between 10 a.m. to 2 p.m. during the pendency of the trial and also on every date before the trial Court.

(E) The Applicant No.3 shall co-operate for the early disposal of the trial. If the trial Court is of the opinion that the said Applicant No.3 is responsible in any manner for early disposal of the trial, that fact be recorded in the roznama, which can be a ground for cancellation of bail.

. Copy of this order be forwarded to the Secretary, Health Department, Government of Maharashtra, Mantralaya, Mumbai, for causing an appropriate inquiry into the incorrect certificate issued by the Medical Officer of Rural Hospital, Barshi, District Solapur, and take appropriate steps against the concerned doctor, as may be advised and permissible by law, and report compliance of this direction to this Court within three months from today. Matter be placed after three months under caption "Directions" for appropriate order.

. It is made clear that the trial Court shall proceed with the trial on its own merits in accordance with law uninfluenced by any observation in this order.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)